MC 864/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

The writ petition being W.P.(C) No. 4569/06 has been filed making a grievance against the decision of the respondents to cancel Annexure-A tender notice inviting seal tenders in the prescribed form for offering consignment against at Guwahati. The last date of submission of tender documents was fixed as 29.05.06.

The same very petitioner has filed the second writ petition, i.e. W.P.(C) No. 649/07 during the pendency of the first writ petition, i.e. W.P.(C) No. 4569/06 making a challenge to issuance of the fresh NIT upon cancellation of the earlier NIT.

Thus while in the first writ petition the grievance of the petitioner is in respect of cancellation of the earlier NIT, in the second writ petition the grievance is in respect of issuance of fresh NIT. In the second writ petition also the petitioner has challenged the decision of the respondents to cancel the first NIT.

Apart from the grievance against the cancellation of the first NIT, the petitioner in the first writ petition has also prayed for a direction to the respondents to go for retendering within a reasonable time so as to enable the successful tenderer to begin the work preferably before or from 30.09.06.

The aforesaid two Miscellaneous applications in both the writ petitions have been filed for the direction of stay of retendering process.

I have heard Mr. P.G. Baruah, learned Sr. counsel assisted by Mr. Dasgupta, learned counsel for the petitioner who has argued in W.P.(C) No. 649/07. I have also heard Mr. R. Sharma, learned counsel for the petitioner in W.P.(C) No. 4569/06. Mr. S.N. Sarma, learned Sr. counsel assisted by Mr. H. Sarma and Mr. A. Sarma has argued on behalf of the official respondents.

Mr. Sarma referring to the prayer for retendering made by the petitioner itself in W.P.(C) No. 4569/06, submits that truly speaking both the writ petitions have become infructuous. He submits that since the prayer of the petitioner is for retendering and the official respondents have initiated retendering process, the relief prayed by the petitioner is virtually granted. According to him the petitioner has made a prayer in the second writ petition being W.P.(C) No. 649/07 running counter to the prayer made in the first writ petition being W.P.(C) No. 4569/06. Mr. Sarma has also questioned the maintainability of the writ petition in view of non-joinder of necessary party and there being over lapping of writ petitions.

Mr. P.G. Baruah, learned Sr. counsel representing the petitioner in W.P.(C) No. 649/07 as well as Mr. R. Sharma representing the petitioner in W.P.(C) No. 4569/06, submit that entire action of the respondents in initiating the fresh tender process is guided by extraneous consideration and is founded on mala fide exercise of power. According to them when in the earlier tender process, there were only three tenderers and the L1 and L2 tenderers remained out of the fray, it was incumbent on the part of the respondents to invite L3 tenderer, i.e. the petitioner for negotiation as was sought to be done with the L1 tenderer.

Mr. Sarma, learned counsel for the respondents has argued that the action of the respondents towards initiation of the fresh tender process is based on CPC guidelines annexed to the counter affidavit. It is the submission of both Mr. P.G. Baruah, learned Sr. counsel as well Mr. R. Sharma representing the petitioner in both the writ petitions that the respondents have misconsidered the CVC guidelines and upon such consideration of the same, they have taken recourse to fresh tender process.

I have given anxious consideration to the submissions made by the learned counsel for the parties and the materials on record. The first writ petition being W.P.(C) No. 4569/06 was entertained by order dated 11.09.06 and notice was issued, without, however any interim order. Likewise the second writ petition being W.P.(C) No. 649/07, the writ petition was entertained by order date

d 09.02.07 and that occasion also no interim order was passed. There being no in terim orders operating against the impugned tender notice, the respondents have gone ahead with the tender process and it is submitted by the learned counsel fo r the respondents that in response to the NIT, tenders have been received and th e matter is under process and final decision in receipt of the same shall be tak en within a short time.

The CVC guidelines on which both the parties have placed relianc e speak for retendering in the event of L1 tenderer withdraws from the process w hich is required to be initiated by way of negotiation with the L1 tenderer. I n the instant case, the petitioner was the L3 tenderer in the earlier tender pro cess. The L1 tenderer was invited for negotiation to justify the price offered. However, when there was no response from the L1 tenderer, the respondent authori ties falling back on the CVC guidelines annexed to the counter affidavit, has de cided to take recourse to fresh tender process. Thus, the fresh NIT was issued.

While it is the allegation of the petitioner that by taking reco urse to fresh tender process, the respondent authorities have benefited the exi sting contractor by way of granting extension. At this stage, learned counsel fo r the respondent authorities submits that such extension is permissible as per t he terms of the agreement, upto the period of one year. He further submits that if the stay order is granted, same will rather benefit the said contractor.

Since fresh tender process initiated by the respondent authoriti es is at the final stage and prima facie I am satisfied that the respondents au thorities have taken recourse to fresh tender process with bonafide exercise of power, I am of the considered opinion that stay of the fresh tender process is not called for.

In view of the above, the prayer made in the Miscellaneous appli cations stands rejected. Needless to say that finalisation of the impugned proce ss of tender during the pendency of the writ petition shall be subject to the re sult of the outcome of the writ petition. This order has been passed only in res pect of the interim prayer. None of the observations made in this order shall a ffect the rights and contentions of the either party in the final hearing of the writ petitions.

Both the Misc. applications are dismissed.